1952. **File No.** O. Forest/52

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Regal Department-
A - BRANCH

P.9(E)

Subject:— Opinions under the Indian Forest Act, 1927.

File No. O. Forest/52

Gen. 194 a.

519-A

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Office of the R.L.A.

Sub-section (1) of section 68 of the Indian Forest Act, 1927, empowers the State Government by notification in the Official Gazette to empower forest officers to compound offences other than offences specified in ~~ex~~ sections 62 and 63. The expression "forest officer" as defined in section 2(2) of the Act means any person whom the the State Government appoints to carry out any of the purposes of the Act. By para 3 of Government Notification, Revenue Department No. 4338/39(d), dated the 1st October, 1948, Government has appointed all Collectors and Assistant and Deputy Collectors and all Mamlatdars and Mahalkaris in the Bombay State to be Forest Officers for the purposes of the Forest Act with respect to such reserved or protected forests within the limits of their respective charges as may from time to time be under the management of Revenue Department, and subject to the provisions of sub-section (3) of sec. 68, have invested those officers with the powers specified in section 68 with respect to such forests. The restriction in sub-section (3) is that the sum of money accepted as compensation shall not exceed fifty rupees. In view of this notification, it would be competent for the Collectors, Assistant Collectors, Deputy Collectors, Mamlatdars and Mahalkaris to exercise the power of composition under section 68 of the Act in respect of forest offences committed in reserved or protected forests in their respective charges. It is, not necessary for them to act under section 43 of the Bombay Land Revenue Code, 1879.

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U.R. to A.& F.D., No. 6822, dated the 1st May, 1952.

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R.L. No. 4917 dt. 11-3-1952.

Submitted.

Please see A.& F.D. note dated 5-3-52 at page 6 ante. The view taken by the A.& F.D. that Magistrates who are already invested with summary powers under the Cr.P.C. can try Forest cases summarily without any special empowerment under section 67 of the Forest Act, is correct

The view taken by A.& F.D. is correct.

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U.O.P. to A.& F.D., No. 7967; dated 13th May 1952.

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Indian Forests Act 1927.
Section 28(1).

Assignment of Forest Areas to individuals.

The proposal of the Agriculture and Forest Department to bring into operation the model Rules as at pages 69-73/c as executive instructions in the form of a Government Resolution does not appear to be legally possible. Section 28(1) of the Indian Forests Act, 1927, empowers the Government to assign to any village community the rights of Government in to or over any land which has been constituted a reserve forest, and to cancel such assignment. This section restricts the power of Government to assign such forests only to a village community. The assignment envisaged in the draft rules to individuals would be contrary to these provisions and therefore illegal.

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U.R. to A.G. F.D., No. 15141/A; dated the 15th September, 1932.

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Legal Department.

Forest rights of Inamdar of Sant State.

Recognition of

Pending the decision of Government as to how and to what extent the Inamdars' rights to the forests trees in the merged areas should be recognised by Government, no useful purpose would be served by the R.L.A., expressing any view about the rights of the Inamdar, in the present case, on the basis of the interpretation of his Sanad; for, whatever rights were enjoyed by the Inamdars against the former Rulers within their States, such rights cannot be enforced against the successor Government. It would, therefore, be necessary that Government should first settle the forest rights of the Jahagir Inam villages of the former Sant State and in so settling it would be open to Government to consider the terms of the Sanads issued to various Inamdars in that State.

2. If the trees which have been already felled in pursuance of the agreement of sale between the Inamdar and the Vendee are likely to deteriorate unless they are removed from the forest areas, it would be open to Government to allow such removal on condition that the Vendee and the Inamdar agree to pay to Government the price of the trees in the event of Government holding that the Inamdar possessed no rights over such trees.

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[redacted]
Additional Secretary to Government.

U.O. to A. & F.D., No. 16411/A; dated the 6th October, 1932.

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Office of the R.I.A.

The questions raised for the R.I.A.'s consideration are :-

(1) Whether Government can assign its rights in or over any land under section 28(1) of the Forest Act to village panchayats or co-operative societies, and

(2) if so, whether such panchayats or co-operative societies can make sub-assignments under their control to villagers or to their members.

Under section 28(1) of the Indian Forest Act, the State Government may assign to any village community the rights of Government to or over any land which has been constituted a reserved forest or a protected forest and may cancel such assignment. A village panchayat would not be a village community and consequently, the land cannot be assigned under section 28(1) of the Forest Act to a village panchayat. However, if land is assigned to a village community under that provision, such land would vest in the panchayat for the purpose of a village community (see section 26(1)(f) of the Bombay Village Panchayats Act, 1958, where specific reference is made to forest lands, including lands assigned under section 28 of the Indian Forest Act). Government can, therefore, assign the land under section 28 of the Indian Forest Act to a village community whereafter it would vest in the panchayat as a forest land. The panchayat will then have power to manage the land in exercise of which power it may assign parts of such land to various individuals of the village for planting fruit trees and fuel trees on payment of rent.

As stated above, under section 28(1) of the

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Indian Forest Act, land can be only to a village community. A co-operative society in a village cannot be considered a village community. There is no provision in the Bombay Co-operative Societies Act empowering a co-operative societies to accept an assignment of such land from Government. Consequently, the proposal to assign land under section 28(1) of the Indian Forest Act to a co-operative Society would not be legally feasible.

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U.R. to A. & F.D., No. 19433/A; dated the 21st November, 1952.

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Office of the R.L.A.

Forest Act, 1927, Sections 35 and 36.

Under section 36(1) of the Forest Act, 1927, in case of neglect of, or wilful disobedience to, any regulation or prohibition under section 35, or if the purposes of any work to be constructed under that section so require, the State Government may, after notice in writing to the owner of such forest or land and after considering his objections, if any, place the same under the control of a Forest Officer, and may declare that all or any of the provisions of this Act relating to the reserved or protected forests shall apply to such forest. It is, therefore, apparent that before the management of the forests of the Thakores in the present case can be assumed by Government under section 36, it will have to be shown that the Thakores have neglected or wilfully disobeyed the regulations or prohibitions imposed under section 35(1). Government may, therefore, release from management the forests of the Thakores and the issue regulations or prohibitions under section 35(1) and allow some time to the Thakores to obey those regulations or prohibitions and thereafter, in case those regulations or prohibitions are found to be neglected or wilfully disobeyed by them, notice can be now issued to them under section 36 to show cause why the managements of the forests should not be taken over by Government under section 36.

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U.R. to A.& P.D., No. 20585/A; dated the 8th December, 1952.

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Office of the R.L.A.

Forest Act, 1927 section 71. Cattle Trespass Act, 1871, sec. 12.

Fines in respect of reserved and protected forests.

The question for R.L.A.'s consideration is whether it is obligatory on the State Government to prescribe different rates of fines within the limits laid down in section 71 of the Forest Act, 1927, for cattle trespassing on reserved and protected forests or whether the scale of fines prescribed under section 12 of the Cattle trespass Act, 1871, in Government Notification, Home Department, No. 7073/5, dated the 14th March 1950, which is higher than that laid down in section 71 of the Forest Act, can be made applicable in relation to such areas.

2. Section 71 of the Forest Act, 1927, provides that the State Government may be notification in the Official Gazette direct that in lieu of the fines fixed under section 12 of the Cattle-trespass Act, 1871, there shall be levied for each head of cattle impounded under section 70 of this Act, such fines as it thinks fit, but not exceeding those mentioned therein. It is clear from this provision that the scale of fines to be levied in lieu of those prescribed under section 12 of the Cattle-trespass Act, cannot be higher than the one laid down in section 71 of the Forest Act. As the scale of fines prescribed in G.N., H.D. No. 7073/5, dated the 14th March 1950, is higher than the one laid down in section 71 of the Forest Act, it cannot be applied in relation to cattle trespassing on reserved or protected forests.

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U.R. to A.& F.D., No. 21073/A; dated the 15th December, 1952.

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